IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4608 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)

Versus

JAYANTIBHAI NATHABHAI C/O. BHARATIYA MAJDOOR SANGH - Respondent(s)

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Appearance :
Mr. Hasit D. Dave, AGP for Petitioner No(s).: 1.
MR PANKAJ R DESAI for Respondent No(s).: 1.
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CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 26/07/2005

ORAL JUDGMENT

In this petition under Article 226/227 of the Constitution of India the petitioner, State of Gujarat, through Deputy Executive Engineer, Jamnagar, has challenged the legality and validity of the judgment and award passed by the Labour Court,

Jamnagar, dated 26.8.2004 in Reference (LCJ) No. 1662 of 1990 (Old (LCR) No. 980/1989) in partly allowing the said Reference directing the petitioner to reinstate the respondent workman with 20% backwages and continuity of service.

2. It appears from the record that the respondent workman was appointed as a Daily-Wager labourer at Village Kulla in the laboratory and he worked with effect from 6.4.1987. It was the case of respondent workman that his services came to be terminated with effect from 15.10.1988 and as before terminating his services the provisions of Section 25-F of the Industrial Disputes Act, 1947 were not followed and that at some other projects other persons came to be appointed there was breach of provisions of Section 25(G) and (H) of the Industrial Disputes Act, 1947 [“the I.D. Act” for short] he raised industrial dispute which was referred to the Labour Court, Jamnagar for its adjudication. It was contended on behalf of the petitioner that in the last preceding year of his alleged termination the respondent has not completed 240 days; that the appointment of respondent workman was as a Daily Wager; in the year 1988 the Laboratory itself was closed; and therefore there was no question of following procedure under Section 25(F) of the ID Act. It is also further submitted that merely because at some other place some other persons might have been appointed it cannot be said that there is

breach of provisions of Section 25 (G) and (H) of the I.D. Act and therefore it was requested to dismiss the Reference. The Labour Court, Jamnagar by judgment and award dated 26.8.2004 partly allowed the said Reference by directing the petitioner to reinstate the respondent workman with 20% backwages and continuity in service and while observing that the petitioner has produced the muster roll for the period upto 3.7.1988 and as the muster rolls for the period from 4.7.1988 to 14.10.1988 were not produced by drawing adverse inference it has held that the respondent workman has completed 240 days in the last preceding year and that between 1988 and 1999 some new projects were there where there might be need for a Laboratory and in view of all these breach of provisions of Section 25(G) & (H) has been committed. Being aggrieved and dissatisfied with the judgment and award passed by the Labour Court, Jamnagar dated 26.8.2004 passed in the aforesaid Reference, the petitioner has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. Shri Hasit D. Dave, learned AGP appearing on behalf of the petitioner State has vehemently submitted that the Labour Court has materially erred in drawing adverse inference against the petitioner for non-production of the muster roll for the period between 4.7.1988 to 15.10.1988 and thereby holding that the respondent workman has completed 240 days in

the last preceding year. He has further submitted that in fact the onus was on the respondent workman to first prove by leading evidence that he has completed 240 days and for that purpose he has relied upon the judgments of the Hon'ble Supreme Court in the case of Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Another reported in (2004) 8 SCC Page 161; in the case of Municipal Corporation, Faridabad Vs. Shri Niwas, reported in (2004) 8 SCC Page 195; and in the case of Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Another reported in AIR 2005 Supreme Court Weekly 3160. It is also further submitted by him that as such there was no evidence that some new projects were there subsequently and/or other persons were appointed. He has submitted that assuming that some other projects were there at other villages and that some other persons were appointed there for the period of 1988-1999 in that case also the respondent workman could not have been appointed at other place as Daily-Wager as the same is to be done considering local need and therefore the finding of the Labour Court that there is breach of Section 25(G) & (H) of the I.D. Act is also not warranted which is contrary to the evidence on record.

4. Per contra, Shri Pankaj R. Desai, learned advocate appearing on behalf of the respondent has opposed the present Special Civil Application and an affidavit-in-reply is also filed on behalf of the respondent. It is submitted that it is a finding of

fact given by the Labour Court that the respondent workman has completed 240 days in the last preceding year and therefore when the services of the respondent workman were terminated without following any procedure as required under Section 25(F) of the I.D. Act and without making payment of retrenchment compensation the Labour Court is justified in allowing the Reference by directing the petitioner to reinstate the respondent workman. It is submitted that non-production of the muster roll would lead to drawing of adverse inference against the petitioner and the Labour Court has rightly drawn the adverse inference. It is therefore requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that the respondent workman was serving as a Daily Wager-Peon in a Laboratory with effect from 6.4.1987. It is the case of respondent workman that he has worked upto 15.10.1988. It is also not in dispute that he was appointed at the Laboratory at Khud Canal and on completion of the said project of canal work the laboratory was closed. It is the case of the petitioner that the respondent workman has not completed 240 days in the last preceding year and for that purpose they produced the muster roll for the period from 6.4.1987 till July 1988 more particularly upto 3.7.1988. No documentary evidence was produced by the respondent workman that he has worked for 240 days continuously in the last preceding year more

particularly to show that he has worked between 4.7.1988 and 14.10.1988. The Labour Court drawn adverse inference by holding that as the petitioner has not produced muster roll for the period between 4.7.1988 and 14.10.1988 the respondent workman has completed 240 days in the last preceding year and as such there is breach of Section 25-F of the I.D. Act. Considering the Judgments of the Hon'ble Supreme Court in the case of Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Another; in the case of Municipal Corporation, Faridabad Vs. Shri Niwas; and in the case of Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Another [supra], the onus is on the workman to prove that he has completed 240 days in the last preceding year and that non-production of the muster roll by the employer will not draw adverse inference, *ipso facto*, to hold that the workman has completed 240 days in the last preceding year. Under the circumstances, the finding given by the Labour Court, by drawing adverse inference that the workman has completed 240 days in the last preceding year is contrary to the law laid down by the Hon'ble Supreme Court in the aforesaid three decisions. At this stage, Shri Pankaj Desai, learned advocate appearing on behalf of the respondent workman has submitted that if this Court is not satisfied with regard to the finding arrived at by the Labour Court with regard to completion of 240 days in the last preceding year by the respondent workman the matter may be remanded to the Labour Court allowing the respondent workman to

lead further evidence, if any, to prove that he has worked for 240 days in the last preceding year.

6. So far as the finding given by the Labour Court with regard to breach of provisions of Section 25(G) & (H) of the I.D. Act is concerned, the same is not on proper appreciation of evidence adduced on behalf of the petitioner. What was deposed by the witness who came to be examined on behalf of the petitioner was that between 1988 and 1999 there were other projects at Villages Fuljar, Virane etc., and at those places there might be need of a Laboratory and on those two projects at different villages new employees might have been appointed. Now, if at some other places new persons are appointed due to some new project as daily-wagers and even those projects are also completed, it cannot be said that there is breach of provisions of Section 25(G) & (H) of the I.D. Act. What is required to be considered is that if at a place where the respondent workman was working, other persons are appointed subsequently but the respondent workman is not called for, in that case only the provisions of Section 25(G) & (H) can be made applicable. It is required to be noted that even in the cross-examination, the respondent has admitted that he had no evidence to prove that the scheme is continued and/or other new persons are appointed. In view of the aforesaid admission by the respondent, and in absence of any further material and/or evidence showing new projects where other persons were appointed, the Labour Court was not

justified in holding that there is breach of Section 25(G) & (H) of the I.D. Act. However, as stated herein above, so far as breach of Section 25(F) of the I.D. Act is concerned, the finding was given by the Labour Court only on non-production of the muster roll for the period July/August 1988 to 15.10.1988 and the respondent workman having failed to produce any documentary evidence that he has worked for 240 days in the last preceding year and also between July/August 1988 to 15.10.1988, the finding of fact given by the Labour Court is vitiated more so while considering the aforesaid judgments of the Hon'ble Supreme Court.However, accepting the alternative submission on behalf of the respondent to remand the matter so that the respondent workman can produce the documentary evidence, if available, to prove that he has worked for 240 days in the last preceding year from 15.10.1988, this Court proposes to remand the matter to the Labour Court by quashing and setting aside the judgment and award impugned in the present Special Civil Application.

7. For the reasons stated herein above, the petition succeeds partly. The Judgment and award passed by the Labour Court, Jamnagar dated 26.8.2004 passed in Reference (LCJ) No. 1662 of 1990 is hereby quashed and set aside and the matter is remanded to the Labour Court, Jamnagar for taking fresh decision in accordance with law and on merits. It will be open for the respondent workman to adduce further evidence, if any, with regard to completion of 240

days in the last preceding year from 15.10.1988 and the same may be considered in light of the judgments of the Hon'ble Supreme Court herein above quoted. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

RMR.